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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

BURBANK KAWASAKI, INC.,

Protestant,

v.

KAWASAKI MOTORS CORP., U.S.A., a
Corporation,


Respondent.

Protest No. PR-2328-12 and PR-2333-12

**EXHIBIT "A" TO RESPONDENT
KAWASAKI MOTORS CORP., U.S.A.'S
POST-HEARING BRIEF ON REMAND**

Dated: October 15, 2013

BAKER & HOSTETLER LLP
MAURICE SANCHEZ
KEVIN M. COLTON


Maurice Sanchez
Attorneys for Respondent
Kawasaki Motors Corp., U.S.A.

1 NEW MOTOR VEHICLE BOARD

2 GENERAL MEETING

3
4 STATE OF CALIFORNIA NEW)
MOTOR VEHICLE BOARD)
5 GENERAL MEETING)
6 _____)

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8 REPORTER'S TRANSCRIPT OF BOARD MEETING

9
10 DATE: Thursday, July 25, 2013

11 LOCATION: Hilton Los Angeles airport
12 5711 West Century Boulevard
13 San Lorenzo F room
Los Angeles, California 90045

14 REPORTED BY: Linda S. Oak, CSR 10316
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1 APPEARANCES:

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Public Member

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Public Member

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18 Also Present:

19 Michael Norton

20 General Counsel for Kawasaki
21
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1 Los Angeles, California, Thursday, July 25, 2013.

2 10:29 a.m. - 12:52 p.m.

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4
5 MR. OBANDO: Let's call the meeting to order at
6 10:29.

7 Mr. Brennan, roll call, please.

8 MR. BRENNAN: Mr. Brooks? (No answer.)

9 Mr. Flesh?

10 MR. FLESH: Here.

11 MR. BRENNAN: Lizarraga?

12 MR. LIZARRAGA: Here.

13 MR. BRENNAN: Mr. Obando?

14 MR. OBANDO: Here.

15 MR. BRENNAN: And Mr. Stevens. (No answer.)

16 We have a quorum.

17 MR. OBANDO: Thank you, Mr. Brennan.

18 Item 3, the Pledge of Allegiance.

19
20 (Everyone rises for the
21 Pledge of Allegiance.)
22

23 MR. OBANDO: Thank you, everyone. Welcome.

24 Let's go to Item Number 4. These are -- we
25 have a couple of items we're going to be making

1 decisions on today. All right. Why don't we go to Item
2 Number 4. This is going to be oral presentations in
3 front of the public members. Let's see.

4 Comments by the parties or by their counsel
5 that are made regarding any Proposed Decision, ruling,
6 or order must be limited to matters contained within the
7 Administrative Record of the proceedings. No other
8 information or argument will be considered by the Board.

9 This is an adjudicated matter described in
10 Government Code Section 11125.7(e), and therefore,
11 members of the public may not comment on such matters.

12 Case of Burbank Kawasaki, Inc. versus
13 Kawasaki Motors Corporation, U.S.A., a Corporation,
14 Protest Nos. PR-2328-12 and PR-2333-12.

15 On May 8th, 2013, pursuant to Vehicle
16 Section 3067 and Government Code Section 11517, counsel
17 for the parties stipulated to allow the Board to
18 consider the Proposed Decision 34 days from the date the
19 ALJ submitted the Proposed Decision to the Board. At
20 the June 25th, 2013 General Meeting, the Board did not
21 have a quorum of Public Members to consider the proposed
22 decision.

23 On June 28, 2013, counsel for the parties
24 stipulated to allow the Board to consider the Proposed
25 Decision 63 days from the date the ALJ submitted the

1 Proposed Decision to the Board.

2 I want to thank both parties and both
3 counsel for allowing us to do that for that extension.

4 Kawasaki sought to terminate Burbank's Kawasaki
5 franchise because Burbank failed to meet sales
6 requirements, maintain model inventory, provide equal
7 representation for Kawasaki products, and maintain
8 flooring. Protestant contends that any deficiencies
9 and/or claimed operational problems it may have are
10 directly due to action or inactions of Kawasaki.

11 A merit hearing held before Administrative
12 Judge Jerold A. Prod, February 5th through the 7th,
13 2013.

14 As of right now, the Proposed Decision
15 would be to overrule the protests and permit Kawasaki to
16 terminate Burbank's franchises for motorcycles and ATVs.

17 Okay. The members have reviewed the
18 Administrative Record and the Proposed Decision, and we
19 have all parties up at the table. So, terms of
20 procedure, we're going to allow the Respondents to have
21 15 minutes, and then you'll each have 15 minutes and
22 then five minutes for a response. Okay.

23 So why don't we start with Mr. Sieving, or
24 start with the Respondent.

25 MR. SANCHEZ: Morning. My name is Maurice

1 Sanchez. I represent Kawasaki Motor Corp. U.S.A. With
2 me today is Michael Norton, just a general counsel for
3 Kawasaki. I'm going to keep my presentation brief and I
4 would like to reserve whatever time is remaining for
5 rebuttal.

6 Essentially, you have before you, the
7 Proposed Decision of Administrative Law Judge Jerold
8 Prod recommending that the termination -- the protest be
9 overruled and the termination be allowed. Kawasaki
10 obviously supports that Proposed Decision.

11 There was really not a lot of dispute here.
12 It was essentially undisputed that sales made by this
13 dealership were inadequate; that, you know, the
14 representation was not adequate of the models issued by
15 Kawasaki. The inventory was inadequate and that the
16 dealership has no flooring. The real dispute was as to
17 why that was the case. Kawasaki would submit that the
18 sales were inadequate -- and this was in the record --
19 long before the flooring was suspended by Kawasaki
20 Motors Finance. In fact, the flooring was suspended on
21 June 22nd -- sorry, June 27th, 2011, and in the Proposed
22 Decision there is a chart at page 20 which shows that
23 the sales were deficient as far back as 2008. In that
24 year, the dealership achieved only 41 percent of
25 expected sales. In 2009, that dropped to 25 percent; in

1 2010, it was 32 percent; in 2011, it was 22.4 percent,
2 and up to September 2012, it was 19.8 percent. So even
3 before flooring was suspended in June of 2011, this
4 dealership's sales were very, very deficient.

5 The other issue was that the -- and this
6 was not, for whatever reason, a Proposed Decision, but
7 there was testimony at the hearing to the effect that a
8 dealer is allowed to get flooring at another institution
9 besides Kawasaki Motors Finance. The dealer is not
10 limited to that institution. The dealer is free to
11 obtain flooring from any other financial institution --
12 that is acceptable to Kawasaki -- such as a bank, such
13 as another lender, and other Kawasaki dealers do have
14 flooring through those other institutions.

15 MR. FLESH: Are you saying then that your dealer's
16 flooring has to be from an approved or accepted source?

17 MR. SANCHEZ: To Kawasaki Motors Corporation, yes.
18 But it can be an institution other than Kawasaki Motors
19 Finance, and other dealers do have flooring through
20 other institutions.

21 MR. FLESH: But they have other floorings or other
22 sources that have to be approved for Kawasaki?

23 MR. SANCHEZ: It simply has to be recognized as an
24 approved financial institution. Any major bank,
25 Deutsche Bank, Bank of America, Wells Fargo would be

1 acceptable. If they want to propose another bank,
2 Kawasaki would investigate that institution and
3 determine whether or not it was acceptable, and most
4 are.

5 My only point is that it does not have to
6 be Kawasaki Motors Finance, and as it is in the record
7 Kawasaki Motors Finance is a separate company of
8 Kawasaki Motors and has its own standards, has its own
9 requirements. Kawasaki Motors does not control them.
10 So if this dealer felt that Kawasaki Finance was in some
11 way -- their standards were too high or it could not be
12 met, the dealer was free to go elsewhere to find
13 flooring.

14 MR. OBANDO: I guess along the same lines, is
15 there a pre-approved list of bank institutions that
16 Kawasaki has?

17 MR. SANCHEZ: That was not in the record, so I
18 don't know that we know that. I don't know that there
19 is a pre-approved list, but as I said, other dealers
20 have -- and Cheryl Montel (phonetic) of Kawasaki Motors
21 Finance and other Kawasaki witnesses did testify -- that
22 other dealers have flooring through other sources.

23 This dealer has been basically without
24 flooring since June 27th, 2011 up through the date of
25 the hearing in this matter in early 2013. So over 18

1 months without flooring, no effort -- or no successful
2 effort was made to obtain flooring through that date.
3 Inventory, similarly, was dwindling. It was down to
4 eleven units at the time of the hearing, and so I would
5 submit to you that given those facts and given the fact
6 that basically the trend was for sales or for inventory
7 to continue to decline, the Proposed Decision is correct
8 and should be sustained.

9 The other final issue I wanted to cover,
10 there was some argument that the amount of flooring
11 required was too high. For that I would draw your
12 attention to another chart in the decision on page 17 at
13 paragraph 74, and this shows that the amount of credit
14 that the dealership had and the amount of credit
15 actually used by the dealership far exceeded the amount
16 that was required by Kawasaki of \$800,000. There was
17 other testimony of \$765,000. The credit that the
18 dealership had through January of 2010 was \$1.25
19 million, as high as \$1.5 million, and the lowest that
20 the credit used ever was, in this history -- recent
21 history of the dealership was 629,000. It was true that
22 other lines were terminated at the dealership that are
23 not subject to the Board's jurisdiction, but again, if
24 the dealer wished to have their -- his flooring amount
25 lowered to reflect these other lines, that was never

1 presented to Kawasaki, and there was testimony to that
2 effect at the hearing.

3 So unless you have any questions for me, I
4 would like to reserve the rest of my time for rebuttal.

5 MR. OBANDO: Mr. Sieving?

6 MR. SIEVING: Thank you, Mr. President, Members of
7 the Board. As you know, I'm Michael Sieving and I am
8 representing Kawasaki. With me is Leon Bellissimo, the
9 owner of Burbank Kawasaki, and what I would like to do
10 is to present my arguments and reserve some of my time
11 because Mr. Bellissimo would like to address the Board
12 directly just for a few minutes. He assured me that he
13 will confine his comments to matters that are within the
14 Administrative Record in this case.

15 First of all, I want to start by saying
16 this is one of those cases where I don't necessarily
17 disagree with the majority of the findings in Judge
18 Prod's proposed ruling. For example, Judge Prod found
19 that Kawasaki has not established that Burbank had not
20 made the necessary investments into the dealership.
21 That is paragraph 100. Judge Prod found that Kawasaki
22 had not established that Burbank Kawasaki investments
23 was not permanent. Judge Prod found that Kawasaki had
24 not established that Burbank Kawasaki does not have
25 adequate motor vehicle sales and service facility

1 department, parts and personnel. In addition, Judge
2 Prod found Kawasaki had not established that Burbank
3 failed to meet its warranty obligations.

4 What this case really comes down to is
5 three determinations that Judge Prod made, and one
6 determination is at the beginning in 2008, the sales
7 performance of the dealership started to slide. Now, as
8 this Board knows quite well from other cases the Board
9 has heard, in 2008 there was an economic recession that
10 hit California very hard, and it hit the industries that
11 this Board has jurisdiction over particularly hard, and
12 those being motorcycle and RV industries. Those are
13 probably worse than the car business because of lack of
14 disposable income. So in 2008, we haven't disputed the
15 fact that the sales performance started to decline.

16 The two other findings that Judge Prod
17 relied upon to come up with his proposed determination
18 is that Burbank breached the franchise agreement by
19 losing its flooring line. Its flooring line was
20 suspended, and Burbank's inability to satisfy the newly
21 imposed requirements by Kawasaki Motors Finance of its
22 \$212,000 irrevocable line of credit or letter of
23 credit -- sorry -- and it is important to note -- and
24 there is not a lot of findings in the Proposed Decision
25 about this, but prior to the suspension of credit, there

1 was no additional requirement by Kawasaki Motors Finance
2 of an irrevocable letter of credit, and essentially what
3 they did is they had the inventory as collateral. They
4 obviously had UCC-1s and head liens on the inventory,
5 and if the dealer failed to pay for the inventory, they
6 had a right to come and repossess the unit. They have
7 the inventory as collateral, but this was a new
8 requirement, and not only do we want the inventory for
9 collateral but we want from another financial
10 institution, a irrevocable letter of credit in the
11 amount of \$212,000, before we re-instate the flooring on
12 it.

13 There is testimony in the record, and in
14 fact it is replete with testimony, that never ever did
15 Kawasaki Motors Finance ever lose a dime on this dealer.
16 This dealer always paid every unit and it was never an
17 issue of dealing things out of trust. He paid for the
18 units. So -- and Mr. Bellissimo was unable to get a
19 \$212,000 irrevocable letter of credit to satisfy these
20 newly-imposed requirements.

21 The third issue that Judge Prod discusses
22 in his Proposed Decision is that Burbank Kawasaki
23 breached the provision of the franchise by not stocking
24 enough units -- enough Kawasaki units.

25 Well, all three of those elements are

1 directly interrelated and intertwined with each other.
2 I mean, it is real obvious that if you don't have
3 flooring, you can't stock an adequate number of units.
4 If you can't stock the units, you can't sell the units.
5 You don't need expert testimony on that, although there
6 was. And Mr. Palmer, from Urban Science, testified and
7 defined the fact with respect to the sales performance
8 contained in the Proposed Decision are based directly on
9 his testimony. He testified that the dealer wasn't
10 selling enough units essentially. That was his
11 conclusion. On cross-examination, even Mr. Palmer
12 admitted that his analysis of sales performance was
13 based on the assumption that the dealership had those
14 units in inventory to sell. The dealership did not have
15 units in the inventory to sell, and therefore, the
16 assumptions that he could have sold more units, really,
17 it isn't supported by the evidence in the record.

18 Now the evidence in the record does
19 establish a number of things, and that is that Mr.
20 Bellissimo has potentially devoted his life to
21 representing Kawasaki. He owned and operated Burbank
22 Kawasaki since 1978, and before that time, for 10 years,
23 he worked at his brother's dealership in Hollywood,
24 which was Hollywood Kawasaki. Only Kawasaki there in
25 Hollywood when he bought his own store in 1978. Mr.

1 Bellissimo only represented Kawasaki; no other
2 motorcycle franchises. His life has been devoted to
3 Kawasaki.

4 Now it is important to note -- and this is
5 discussed somewhat in the Proposed Decision -- that this
6 is and always has been a small dealership. We are not
7 talking about Galpin Ford or Fletcher-Jones Mercedes
8 Benz, we're talking about a small motorcycle dealership
9 kinda of off the beaten path in Burbank, California.
10 But that dealership has been there successfully
11 operating for 35, almost 36 years now.

12 Mr. Sanchez alluded to the cancellation of
13 other lines in reference to the flooring commitments
14 needed, and it is important to note that prior -- in
15 2011, the dealership had motorcycles, ATVs, Jet-Skis,
16 the UTs, which are the side-by-side truck things, and
17 the Mules. And in 2011 Kawasaki canceled the Jet-Ski,
18 the U.T., and the Mule franchise. Got rid of them.
19 This board doesn't have jurisdiction over the
20 cancellation of those types of franchises, so Mr.
21 Bellissimo essentially lost half his business right
22 there.

23 The flooring request that Kawasaki has
24 made, and it is in the evidence and in the Proposed
25 Decision, is that this dealership have 700 -- sorry,

1 \$848,000 in flooring just for the motorcycles and ATVs
2 before the other lines were terminated, the Jet-Ski and
3 the U.T. and the Mule lines. He had \$780,000 in
4 flooring. So what they are essentially doing is saying
5 we got rid of half your business, but yet we're
6 increasing the amount of flooring you need to be able to
7 operate successfully as a motorcycle and ATV dealer.

8 It is our position that that is unfair and
9 created the situation we're in, and that is -- and the
10 \$212,000 irrevocable letter of credit is based upon a
11 percentage of the overall required flooring. Our
12 position is the flooring should have been half of what
13 they are requiring, and therefore, the irrevocable
14 letter of credit would have been substantially less.

15 What we're asking for in this case is that
16 the Board conditionally sustain this protest. And when
17 I say conditionally sustain, under Vehicle Code 3067(a),
18 it allows this board to place conditions upon sustaining
19 a protest, but the conditions have to be run to ensure
20 the compliance with binding contractual commitments.
21 That is your only restriction, where there is a
22 contractual condition in the franchise.

23 So what we're asking for is to
24 conditionally sustain the protest and require that the
25 dealership have a reasonable amount of flooring in place

1 within a prescribed period of time. Obviously, that
2 would be up to you to determine how long it would take
3 to get flooring.

4 Mr. Sanchez is arguing, in his briefs and
5 today actually, that the dealership has been without
6 flooring since June 27th, 2011, and at the time of the
7 hearing had not reacquired or reestablished the flooring
8 line. That is true. And you may ask yourself why has
9 it taken so long to reinstate the flooring on it.

10 Obviously, if the flooring were in place, we can get the
11 units in stock and sell the units and be back in
12 business as usual. But as this board well knows,
13 flooring is difficult to get by anybody under normal
14 circumstances in today's economic environment.

15 I would suggest to you that when you have a
16 dealership that has a pending termination proceeding
17 hanging over its head, difficult becomes impossible, and
18 allowing or conditionally sustaining this protest, and
19 the condition to be imposed that he has to get flooring
20 within a particular period of time for a reasonable
21 amount, and if he doesn't, by operation of the Board's
22 decision, the franchise is terminated. But by doing
23 that, it will eliminate the obstacle that the dealership
24 currently has, and that is this termination protest
25 hanging over its head. No credit company, bank, or even

1 Kawasaki Motors Finance is going to extend credit to a
2 dealership when they know that any day now the franchise
3 is terminated. They will have to come back and have to
4 repossess the unit and possibly take losses on it. It
5 creates an unworkable and essentially impossible
6 solution. So we are asking for the Board to
7 conditionally sustain the protest and allow the
8 dealership then to obtain flooring, a reasonable amount
9 of a money limit within a reasonable period of time, and
10 allow him to get back to business as usual.

11 MR. FLESH: You mention two things on that
12 condition. One, reasonable amount of flooring, and you
13 alluded to the fact that since part of the lines that --
14 the Kawasaki lines were eliminated, that the amount
15 should be lower. I don't know, I just want to -- I'm
16 curious, when you say "reasonable amount," what is a
17 reasonable amount? I'm sure different people have
18 different ideas about what is reasonable and what is a
19 reasonable amount of time to get a flooring facility, if
20 this is what you are proposing.

21 MR. SIEVING: It is what I'm proposing, and quite
22 frankly that is a perfect segway in turning this over to
23 Mr. Bellissimo because he can tell you from an
24 operational perspective.

25 MR. FLESH: Before that, I have another question.

1 Help me understand the working capital kind of
2 requirements. It is composed of the irrevocable letter,
3 line of credit and a flooring line, or is that part of
4 the flooring line? Is it two parts? Because you are
5 talking about 200 and some odd thousand dollars for the
6 letter or line of credit, and then a balance-owed amount
7 to be the flooring line. So how do those pieces work
8 together and how will we be able to -- even if we did go
9 along with your recommendation -- is it going to be
10 realistic for us to think that in some reasonable period
11 of time you will be able to accomplish what you haven't
12 been able to accomplish since 2011.

13 MR. SIEVING: Not having a pending termination
14 protest over his head will enable him to go out and seek
15 flooring, but having a pending termination hanging over
16 the dealership's head creates an obstacle he has been
17 unable to overcome. Banks aren't interested in talking
18 to him.

19 Going back to your original question about
20 working capital, working capital and flooring are really
21 completely separate issues. Working capital is just the
22 operational capital needed to make sure that payroll and
23 rent and that type of stuff are paid. The flooring
24 obviously is a credit line used to purchase inventory so
25 when the dealership orders, say, 10 motorcycles from

1 Kawasaki, those motorcycles are brought to the
2 dealership and delivered and the third-party flooring
3 company wires the money to Kawasaki to pay for the unit.
4 The units are sold retail and they then pay -- Burbank
5 then pays off the bank, whoever that is. Up until now
6 it has been Kawasaki Motors Finance. \$212,000 really is
7 a component part. It's security. That is all it is.
8 Doesn't give him an additional line of credit, but it is
9 something a third party bank like Wells Fargo Bank,
10 whoever, will send a letter saying we don't care what
11 happens to the dealership, if they go belly up, we will
12 pay you \$212,000. He has that much credit.

13 MR. FLESH: Two components.

14 You have to get the flooring line, which is
15 comprised of the letter and line of credit plus an
16 additional amount.

17 MR. SIEVING: Kawasaki Motors Finance, they are
18 the ones that are imposing the requirement that Mr.
19 Bellissimo come up with a \$212,000 irrevocable letter
20 from some third source. That is their requirement. Now
21 it doesn't mean that Wells Fargo or Bank of America or
22 Deutsche Bank will have the same requirement. This is a
23 new requirement Kawasaki Motors Finance has imposed.

24 MR. FLESH: What are you imposing in your
25 suggested conditional order? What is the amount and

1 what component parts? Is it flooring or a letter of
2 credit or line of credit or combination of both?

3 MR. SIEVING: It would be flooring. We're not --

4 MR. FLESH: Component part could be a letter or
5 line of credit?

6 MR. SIEVING: Depending where the credit source
7 is. Obviously, if they are Kawasaki Motors Finance,
8 they are going to require a letter of credit. Some
9 other bank may not. That is really up to the dealership
10 to overcome that obstacle as far as satisfying whoever
11 is going to issue the flooring on it, whether it is a
12 different bank or Kawasaki Finance. It's up to them to
13 come up with that. I'm not suggesting that the
14 irrevocable letter of credit be a part of the Board
15 decision at all. What I'm suggesting is that the Board
16 say by X Date you have to have flooring in place of X
17 Dollars. Now you want to know what the X Dollars is.
18 There is evidence in the record about cancellation of
19 the other lines and where that leaves the dealership in
20 the stocking requirements. I would suggest a reasonable
21 amount of flooring would be around \$200,000. That would
22 enable him to sell the motorcycles, repay the flooring.
23 That level of \$200,000, he would be able to order
24 sufficient inventory. And the ordering system has
25 changed, by the way.

1 One of the reasons in the past -- and this
2 is all in the record. One of the reasons in the past
3 that the flooring lines were set higher than they should
4 be today is that you could only order units once a year
5 and so you needed a sufficient credit line to be able to
6 pay for those units. Kawasaki has changed their
7 ordering system. You now order four times a year, so it
8 is not necessary that you have such a high credit line.
9 You know, in theory, that should have reduced the credit
10 line by three-quarters -- the requirements to the credit
11 line.

12 In our situation, we have not only the
13 change in the ordering system, but we have the loss of
14 other lines that were used as flooring, the Jet-Skis,
15 Mules, and U.T. lines, that were used for flooring that
16 we don't have anymore. So not only do we have the
17 change in the ordering system that reduced the ordering
18 requirements, we have the elimination of other product
19 lines that require flooring. So if you are asked a
20 number, I would say the reasonable number would be about
21 \$200,000.

22 MR. SANCHEZ: Which is not in the record anywhere.

23 MR. FLESH: I read through this stuff, and trying
24 to get back on here with my notes, we should strike all
25 that. That is not relevant.

1 MR. SIEVING: I was responding to your question.

2 MR. FLESH: You told me. Thank you.

3 MR. OBANDO: Did you want to make comments, sir?

4 MR. BELLISSIMO: I'm Leon Bellissimo. I been with
5 Kawasaki since 1968, since we first came to United
6 States, and I start out with my brother in Hollywood,
7 and 10 years later I purchase Kawasaki Burbank, which
8 there were three previous owner in five years' time.
9 They all went out of business. They just could not run
10 the business correctly. So I have been there; I have
11 been successful dealer, struggling, hard times,
12 hardships, you know, the economy. The showroom, I would
13 say, it is big as this room, and there is no room for
14 expansion, and you mention only put ATVs and
15 motorcycles, and not really that much room.

16 Plus, you know, my whole life is Kawasaki
17 and so I know how to do. My home, I owe a lot of bills
18 to the bank, and I have a lot of employees, and this
19 would be very devastating. I would lose everything. My
20 whole life. If I lose my family Kawasaki -- which I
21 consider Kawasaki part of my family -- and, you know, I
22 start with -- stuck with them for the good times and bad
23 times, and now they trying to get rid of me. So I want
24 to remain a Kawasaki dealer forever and ever, until the
25 day I die. And also this termination has been hanging

1 over my head and it is hard to get flooring and
2 everything else.

3 Now before when floor lines were ATVs,
4 Mules, the requirements were originally they would give
5 200,000 to \$300,000 credit line, so district manager
6 would say, Come on, hey, Leon, you have good credit.
7 Here, have more, have more." And they kept threaten me,
8 "Here, order these units or we going to cancel you."
9 The warehouse was full. I mean, I had bikes three,
10 four, five years old in the warehouse, and all dealers
11 have these problems. Since today, same problem. So
12 then they realize a lot of dealers were going out of
13 business, so they change the system -- which I suggested
14 to him for many, many years -- like the car dealers.
15 Let's order every month or every other month, so now we
16 could order every other month and I could call there and
17 get a motorcycle the next day, and I have been paying
18 cash. Actually, my sales now are double since the
19 beginning when they try to cancel me, so now I feel
20 since we could order four times a year and Kawasaki
21 stocks the inventory in their warehouse instead of let
22 us dealers carry million, \$2 million inventory, it is
23 very good partnership. It is profitable for everyone to
24 give me a list of maybe 100-, \$150,000 credit line
25 without a revokable letter of credit, and also I pay

1 cash for some bike, so I have a full line of bikes on
2 display. Now, not every dealer in the United States has
3 a full line of display, because I will say 98 percent of
4 dealer, they violate their agreement. Some dealers only
5 have dirt bikes, some dealers have street bikes --

6 MR. SANCHEZ: Objection. Not in the record.

7 MR. OBANDO: Sustained on that.

8 THE WITNESS: Basically, I always pay my
9 motorcycle. My floor got paid. Never cheat on them,
10 never out of trust, and I never lost one dime. I paid
11 millions and millions of dollars in interest on my floor
12 and it always gets paid on time.

13 MR. SIEVING: Thank you. I'll reserve whatever
14 comment we have left.

15 MR. OBANDO: I know there is a number of
16 questions. I saw you writing diligently on a number of
17 questions. I know you have reserved time plus your
18 five.

19 MR. SANCHEZ: I do, thank you.

20 First point made by counsel that 2008 was a
21 recession, that was addressed at the hearing. The
22 requirement for the dealership to sell is not a raw
23 number, it is a percentage, and so the chart that is on
24 page -- trying to find it. The chart that is on page 20
25 shows a percentage of the expectations that were

1 achieved; that percentage reflects the actual sales that
2 are being made by other dealers, so the recessionary
3 effect is taken into account. All dealers were down.
4 So it is not like his requirement stayed up here, the
5 recession pushed sales down but his requirement stayed
6 up here. His requirement moved with the recessionary
7 effect, so the 41 percent he was achieving in 2008 was
8 of a lower amount. By the way, there was also testimony
9 that that wasn't when sales started to go bad, that was
10 the first year for which Mr. Palmer, our expert, had
11 data that he could show, but there was testimony that
12 sales had been bad at this dealership for a long time
13 even before that. So those percentages that I read off
14 to you that got as low as 19.8 percent in September of
15 2012 were floating with the sales of other dealers so
16 those were not just affecting this dealership and his
17 sales were down because of the recession. That is a red
18 herring.

19 The letter of credit is a Kawasaki Motors
20 Finance requirement. That is not a Kawasaki Motors
21 requirement. So the finance company decides what they
22 need, as Mr. Sieving said. Other banks may not require
23 it; we don't know. But there was testimony and there
24 was -- I questioned Mr. Bellissimo at the hearing.
25 "Have you made efforts to get flooring from other

1 financial institutions? No." It was clear he had never
2 made that effort, and that is one of the reasons we're
3 saying to conditionally sustain this protest -- by the
4 way, this is the first we have heard of this in this
5 proceeding; that was not an argument made at the merits
6 hearing at all, so there is no testimony, there is no
7 evidence in the record of any request for conditionally
8 sustaining this decision.

9 The letter of credit was, again, Kawasaki
10 Motors Finance. He could have tried to find a financial
11 institution that did not require that. He did not do
12 so. He testified that his brother was willing to loan
13 him hundreds of thousands of dollars, yet he bought no
14 inventory with it. So, again, this dealership has been
15 given opportunities to attempt to fix this problem, but
16 has not done so.

17 As far as the termination hanging over
18 their heads, there was no requirement that he inform
19 banks or institutions that there was a termination here.
20 Kawasaki certainly wasn't going to tell anyone. So how
21 that is hanging over his head is a mystery to me.
22 Again, that was not in the record that somehow this was
23 hanging over their heads and prevented them from getting
24 flooring since June of 2011. It is now two years later.
25 So why is it all of a sudden that the skies are going to

1 open up and flooring is going to be obtained? There is
2 no evidence in the record that that is even feasible at
3 this point.

4 The cancellation of the other lines, as we
5 pointed out, this dealership at one time, their flooring
6 requirements were 1.25 million. So to have an 800,000
7 or \$765,000 line of credit is not unreasonable under
8 these circumstances. It is much less than was required
9 previously. So, again, that takes into account the new
10 ordering system. If this dealer felt that he needed a
11 lower amount of credit, he should have proposed that to
12 Kawasaki. He never did that. He never said, "Hey, I
13 only need 100,000." There was testimony at the hearing,
14 because he was asked, I believe, by Judge Prod -- Mr.
15 Bellissimo was asked -- "Well, what do you think is an
16 adequate amount of credit?" He testified \$20,000. That
17 was the only thing in the record as to what he believed
18 an adequate amount of credit is. So \$200,000 was thrown
19 out today. That is not found anywhere in the record.
20 The testimony from Mr. Bellissimo was that he felt
21 \$20,000 was adequate, and I believe that is in the
22 Proposed Decision.

23 So, again, there is going to be this give
24 and take. I understand this dealer is making an effort
25 to save the dealership, but there is really no need. It

1 is two years now since flooring was suspended. This
2 dealer could have attempted to work with Kawasaki, could
3 have attempted to show them that I need less now because
4 two lines are gone. There was no testimony that it
5 should be cut in half. What amount these lines
6 represented to him as far as how many sales he was
7 making, we can tell you there was testimony that
8 motorcycles and ATVs are the big lines for Kawasaki.
9 There was no evidence presented that the side-by-side,
10 the Mule, the Jet-Ski was that big a percentage of the
11 requirement for flooring. So, again, outside of the
12 record.

13 Kawasaki has worked with this dealer -- the
14 flooring was suspended in 2011. Ms. Montel testified
15 she attempted to help him get flooring. She sent him
16 samples of the letter of credit and did all she could to
17 attempt to help him get flooring, and he basically did
18 not respond. He basically showed -- and the testimony
19 showed at the hearing -- he tried to operate it on a
20 shoestring. If I have one customer come in that wants a
21 product, I'll call a dealer and see if I can get that
22 today, and then I don't have to floor it or have it at
23 the dealership. I'll try to get it the same day, as he
24 just stated. That is not the way you run a dealership.
25 You have to stock an adequate inventory for customers to

1 look at, experience, touch, feel, maybe to ride, so they
2 are interested in buying a vehicle. You can't say, oh,
3 I can get that for you. You know, come back tomorrow
4 and I will get it.

5 MR. FLESH: Then I don't want to go outside of the
6 record, so correct me, because I have a limitation here.
7 Mr. Bellissimo, on one occasion that I read, offered to
8 put his home up as collateral for something.

9 MR. SANCHEZ: Yes, for flooring.

10 MR. FLESH: I don't know for a fact, but I suspect
11 that his equity in the home was for more than \$20,000.
12 Are you saying that he offered \$20,000, but if he is
13 offering to use his home as collateral, what was that
14 for?

15 MR. SANCHEZ: Well, \$20,000 was the total amount
16 of flooring he said he needed. Instead of \$800,000, I
17 only need 20-, because I can buy one right away.

18 The home issue, Kawasaki -- again, this is
19 not Kawasaki Motors, this is the finance company. There
20 was testimony that we're not a mortgage lender. We're
21 not equipped. We don't have appraisers. We're not in
22 that business of accepting a home or any kind of real
23 estate as collateral. We just don't do that. That is
24 why they required the letter of credit. That is
25 something they do in order to get additional security to

1 issue a line of credit. They have never, ever accepted
2 a home or other real estate as collateral for flooring.
3 Other lenders might do that, but again, he was free and
4 has been free for two years to go out to other lenders
5 and get a line of credit with his home as collateral.
6 Maybe he could have done that. But, again, there was
7 nothing in the record that showed an effort to do that.
8 So maybe Wells Fargo would have said, "We'll give you a
9 home equity line of credit using your home as collateral
10 and you can use that to buy motorcycles." Again, he
11 didn't do it and hasn't done it for two years. So there
12 is nothing in the record for that. He was asked, "Have
13 you made other efforts?" "Well, no, I just couldn't get
14 the line of credit, the letter of credit. Bank of
15 America and Wells Fargo didn't know what it was when I
16 asked them." And as stated by Judge Prod, that simply
17 wasn't credible. "So what efforts were made," he was
18 asked, and he could not testify to any other efforts
19 that were made, other applications filed to obtain
20 flooring from other institutions. I would submit to you
21 he has had more than adequate opportunity to try to do
22 that, if that is what he was trying to do. There was no
23 argument at the hearing. In the briefing, I believe --
24 Mr. Sieving will correct me if I am wrong -- that they
25 were seeking a conditional sustaining of this

1 termination.

2 So I would submit to you that two years is
3 long enough. If this is truly his life, he would have
4 been out there making efforts to obtain flooring from
5 other sources for over this two-year period. He has not
6 done so. For him to say now I'm going to do it, time
7 has run out. He has -- he tried what he tried, and he
8 did what he could do, and we have to assume that with
9 the termination hanging over him, he did what he could
10 do and was not able to achieve flooring.

11 But I will also remind you that sales were
12 poor even before the flooring was suspended. Three
13 years before. They were poor in 2008, 2009, and 2010
14 and half of 2011 before flooring was suspended. So it
15 wasn't just the lack of flooring, they were abysmal
16 before that. 40 percent, 20 percent, 30 percent, 20
17 percent of what he should have been making compared to
18 other dealers and what they were selling.

19 There was also, as is noted in the Proposed
20 Decision, other people within his area want to buy
21 Kawasaki and are traveling to other dealers that are
22 farther away to buy it. So it is not just that he can't
23 sell, they actually are going outside of his primary
24 market area, what Kawasaki calls the statistical
25 evaluation area or the SEA, S-E-A, area. They are going

1 elsewhere to buy.

2 There are many more problems here besides
3 flooring. They can't all be cured with flooring, and he
4 has had ample opportunity to do that and has not able to
5 do so, and I would ask that this Board adopt the
6 Proposed Decision as its decision. Thank you.

7 MR. SIEVING: On two separate occasions, Mr.
8 Sanchez told you that my request to you to conditionally
9 sustain this protest is the first he has heard of this.
10 I should feel slighted. I assume Mr. Sanchez read my
11 briefs. There were two briefs filed by each party in
12 this case.

13 MR. FLESH: Hold on a minute, please. Robin is
14 that outside of the record?

15 MS. PARKER: In the briefs? It is in the record.
16 Let us know the briefs and page number.

17 MR. FLESH: Note where you are talking about.

18 MR. SIEVING: I have my reply brief and I have my
19 opening brief. In the opening brief, it is on page 10.
20 Conclusion section. Closing brief, it is on page 5.
21 All of page 5. I'm not going to read it all, but
22 essentially what it says is that I'm asking the Board to
23 conditionally sustain the protest to permit Burbank to
24 obtain a flooring line sufficient to enable it to
25 purchase a sufficient line of inventory or permit it to

1 meet the reasonable expected sale obligations. I have
2 said that in both my briefs.

3 MR. SANCHEZ: I stand corrected. I just didn't
4 remember. Sorry.

5 MR. SIEVING: That's all right.

6 Couple of other issues Mr. Sanchez brought
7 up. He said based on the chart -- I think page 20 --
8 that the requirement was 1.2 million in flooring several
9 years ago. That is not what the evidence said and that
10 is not what the Proposed Decision said. There was \$1.2
11 million of flooring being utilized at one point in time,
12 but the credit requirements of Kawasaki at the time were
13 \$765,000. Now the requirements are \$848,000, after they
14 reduced the available profit -- terminated the Jet-Ski.

15 One thing Mr. Sanchez said that actually
16 kind of surprised me was that there was never a request
17 made by Burbank to reduce the amount needed for
18 flooring. There is testimony in this record -- and in
19 fact Mr. Sanchez alluded to some of it -- that Mr.
20 Bellissimo tried, on numerous occasions, to get Kawasaki
21 to reduce the flooring line requirements. The \$20,000
22 that Mr. Sanchez referred to was not -- the testimony in
23 that was not Mr. Bellissimo's opinion that is all I
24 need. That is how it was characterized today. The
25 testimony and the findings on that were Mr. Bellissimo

1 said, "Let's reinstate the flooring at \$20,000 and I
2 will build that up over time. At least start it and
3 open the doors, essentially, and let me order a couple
4 of motorcycles on that and I'll increase it, the
5 flooring line, once I get sufficient collateral or
6 whatever the flooring company needs." That \$20,000 was
7 not Mr. Bellissimo's estimate as the total amount of
8 flooring needed to run this business.

9 So last time I was discussing this with
10 you, 15, 20 minutes ago, you did raise an issue about
11 how do we determine what is reasonable. If the Board is
12 interested in my proposal to conditionally sustain
13 this -- and this, by the way, is an extremely important
14 issue to my client. It is his life. And I mean we're
15 not talking about something minor. This is what he has
16 been doing for his entire life.

17 Mr. Sanchez is right, there is no evidence
18 in the record upon which this board could make the
19 factual determination that \$200,000, \$300,000, 150,000,
20 whatever, is a reasonable figure. I don't think the
21 evidence is there.

22 I would respectfully request if the Board
23 is interested in conditionally sustaining this, is to
24 remand the matter back for a very, very limited hearing
25 on the one issue as to what is reasonable, and Kawasaki

1 can come in and say, well, his expected sales are this
2 amount and he has a 90-day supply, and this is what we
3 need, and we can come in and say because of the changes
4 in the ordering system, we can order more often, and
5 with limited facility space, as Mr. Bellissimo
6 testified, we only need this amount to achieve those
7 sales. It would be an issue, and whoever the Board
8 remand it to would make that determination. This is a
9 reasonable amount, and the decision would kick in either
10 we get flooring for that reasonable amount or the
11 franchise is terminated. That is what the conditional
12 termination or conditional sustaining of the protest
13 says. Says comply with the requirement, need X dollars
14 in flooring by a certain date, or the franchise is
15 terminated, and that is what I have been asking for all
16 along.

17 I'm not here to suggest that this
18 dealership should be able -- you should allow this
19 dealership to operate in perpetuity without flooring. I
20 understand flooring is a component part of any
21 successful car or motorcycle business. What I'm
22 suggesting is that we haven't been able to get flooring
23 because this protest has been hanging over our heads and
24 if the Board conditionally sustain this and sustain the
25 protest, it will allow us to do that. If we don't do

1 that, we're gone.

2 MR. SANCHEZ: Two more points. Sorry.

3 MR. FLESH: Maybe three, and I'll tell you why.

4 What is troubling to me is we're talking about this
5 financial aspect to the inventory, but this proposition
6 also goes into a number of other factors, as you
7 mentioned, and the permanency of investment, for
8 example. A dealership that is off the beaten path --
9 and I don't know when the last time the facility was
10 upgraded, what it requires, things of that nature. It
11 was in the record. I don't know how it was discussed or
12 what was done. If you address one conditionally as Mr.
13 Sieving proposes, there is a lot of other reasons that
14 was considered in this decision.

15 Are you saying -- are both of you saying --
16 and you can answer first -- is that basically
17 everything, the heart of this Proposed Decision is based
18 on the inability to get a flooring arrangement?

19 MR. SANCHEZ: That is a major issue but not the
20 only issue, and not the only important issue. If you
21 look at the chart on page 17, this shows you -- there
22 was testimony that the credit limit shown here was in
23 the flooring amount that the dealership had and it
24 always is over a million dollars back to 2006 and
25 through January of 2010. It is 1.1, 1.2, and then

1 actually on August 5th, 2009, the last bottom line, the
2 adjusted credit limit, which was actually even over the
3 amount of the original line, went up to 1.5. So this
4 shows us this was not the only issue at the dealership.
5 The dealership had flooring during these times, and they
6 were still only making, in 2008, 40 percent of required
7 sales. They were still making, in 2009 and 2010, 20
8 percent, 30 percent. So flooring was important, no
9 question about it, but it was never the sole issue. And
10 the sales that the dealership was able to make, even
11 when it had adequate and more-than-adequate flooring
12 available to it, were abysmal. It was less than half of
13 what the dealership should have been selling. People
14 were going outside of the area to buy from other dealers
15 as far back as 2008. So flooring is not going to fix
16 this. The dealer would like to make it about flooring.
17 He would like to say I'm going to try. I know I have
18 had two years, but now I'm really going to try to get
19 it. Well, (A), it is too late for that, and (B) he had
20 adequate flooring and, as he would say, more than
21 adequate flooring. 1.25 million available, and used.
22 It shows how much he was using of it, and a lot of times
23 he was using 100 percent of it and he still couldn't
24 make the sales to adequately represent Kawasaki at this
25 location.

1 So I would submit to you, flooring is not
2 the only issue here. It is not even the most important
3 issue. This dealer just doesn't represent Kawasaki
4 adequately, and flooring, even though he had it, was not
5 enough to make that.

6 These arguments should have been made by
7 the dealer at the hearing. He should have presented
8 what the adequate amount was. He should have -- that is
9 what they were going for. It is only brought up in
10 briefing. He should have said 20,000 wasn't enough, I
11 really think it should be X amount. Whatever it was,
12 that should have been done. There is no reason that
13 couldn't have been done at the hearing itself, way back
14 in February and early this year. They are simply
15 seeking more delay, and there is no reason for it.

16 Mr. Bellissimo said that is his life.
17 There was adequate testimony that this is also a scooter
18 dealership. Many other scooter lines are sold at that
19 dealership, and frankly, that is probably what it should
20 be.

21 The rent is only 3- or \$4,000 a month,
22 which is in the record. They can sell scooters and have
23 a business there and make adequate sales. That is what
24 it should probably be, and you know, if he wants to
25 remain in business as a dealer of some type, there was

1 adequate evidence and testimony that he could have done
2 that. So he just can't represent Kawasaki adequately.

3 MR. OBANDO: Do you want to follow up on Mr.
4 Flesh's statement?

5 MR. SIEVING: I do.

6 Mr. Flesh, you mentioned permanency
7 investment and whether they have adequate facilities,
8 and as I started off my remarks, I went through the
9 findings of Judge Prod and he found Kawasaki had not
10 established that the dealership did not have permanent
11 investment, did not have adequate facilities. This was
12 litigated at the hearing, and Judge Prod found in our
13 favor on those issues. The only ones he found against
14 us are the ones I raised today, which is sales
15 performance, breach of agreement, and flooring, and not
16 having -- only issues he found adverse to us.

17 MR. FLESH: I had to reread it because of all of
18 the negatives and I was confused.

19 MR. SIEVING: One observation about this, Mr.
20 Sanchez referred to the credit limit being 1.25 million.
21 That is the credit limit, not the requirements of
22 Kawasaki. Every time this dealer would order more
23 inventory, Kawasaki would raise the credit limit, that
24 is why. What we're talking about today is what is
25 required from now on. We're not talking about what he

1 had in the past. He is making a credit limit with the
2 requirements for a credit limit and the two are not
3 related. That is what we feel should be addressed as
4 far as a reasonable amount because, you know, we're not
5 dealing with the economic times we had back in 2004,
6 2005. It is a different world today. And, you know,
7 this credit is not going to be available to pretty much
8 everybody in a motorcycle dealership. This is an
9 extremely important issue to my client and we urge that
10 the Board conditionally sustain this and give him an
11 opportunity.

12 Mr. Sanchez said he had two years to do it. Well,
13 we have been in this protest for most of this time.
14 Give him an opportunity to save his business.

15 MR. OBANDO: Any questions Mr. Lizarraga?

16 MR. LIZARRAGA: None.

17 MR. OBANDO: I want to go back to page 21 on
18 the -- I guess item number 91, which is -- kind of goes
19 back to the issue of sales, 15 percent of Kawasaki sales
20 are made by BTA. Customers in the area are going
21 elsewhere. Kind of going back to that. You know, that
22 is kind of something to consider. You know, what would
23 change that at this point? I mean, what were some of
24 the things that were required having customers go
25 outside of that area that took away from some of his

1 business in terms of that study that was done? What
2 caused that? Because that is significant, and, you
3 know, I think saying this board decided to go in that
4 direction, what has been prevented from -- those
5 customers are gone, they are probably at another dealer,
6 what is it that is going to get them to come back or
7 increase that market in that area to make it sustainable
8 so we're not back here again two years from now or three
9 years from now?

10 MR. SIEVING: Thank you. Inventory. Inventory is
11 what will change that. This dealer is well known in
12 Burbank and has been there a long time. The public
13 knows the dealership is there. If we have the
14 inventory, we can sell the inventory. One of the
15 problems we had, and reason these sales figures are poor
16 and consumers were going outside the market to buy is
17 because we didn't have them. One of the things that has
18 been done in the past is when you have -- especially
19 when you have a long-time dealer who has been there
20 forever and is not doing a very good job, is the Board
21 will allow Kawasaki to establish an additional
22 dealership in a market they perceive to be a sale
23 performance area where they perceive the sale
24 performance is low. Kawasaki did not seek to add
25 additional representation. They sought to terminate the

1 dealer, which would have the adverse effect, which would
2 increase sales in this market. Long-winded answer to
3 your question.

4 The answer to your question is inventory
5 will allow us to get back to business-as-usual and
6 selling motorcycles.

7 MR. OBANDO: Do you have an opinion?

8 MR. SANCHEZ: Inventory won't do it. You see on
9 the chart in 2007, 2008, 2009, and 2010 he had more than
10 adequate inventory. He was using a big percentage of
11 his line of credit and still wasn't making the sales.
12 So inventory alone does not do it. There was evidence
13 in the record that this dealership has very low customer
14 satisfaction on sales. In fact, I think there is some
15 point made here that in one month he sold two units and
16 received complaints on two units. Whether those were
17 the same, it was not clear, but there is a high degree
18 of complaints about this dealership and the customer
19 satisfaction that people are getting there.

20 I would submit to you that is a big reason
21 people are going to other places, because there were
22 lots of complaints about this dealership. It was the
23 last in the district out of 45 dealers. It was near the
24 bottom of the region, and it was even nationally like
25 three from the bottom as far as customer satisfaction.

1 There were exhibits in the record to show that. So it
2 is more than just flooring. This will not be cured by
3 flooring. There are sales issues, there are customer
4 satisfaction issues, there are lots of other issues with
5 this dealership that were all demonstrated.

6 The reason Kawasaki didn't put on evidence
7 on some of these other issues is frankly because it
8 didn't have to. Why go after these other factory
9 contractors that really are extraneous to the main
10 issues? Kawasaki focused on sales, lack of flooring,
11 customer satisfaction; that was not adequate by this
12 dealership, and I would submit to you that is not going
13 to change even if they get flooring tomorrow. It is not
14 going to change for this dealership.

15 The dealership sales have been abysmal
16 since at least 2008. And 2011, of course they fell off
17 the cliff because there was no inventory, even prior to
18 that 40 percent, 20 percent, 30 percent, 20 percent.
19 Those are numbers that can't be explained just by lack
20 of inventory. Dealer had flooring and had inventory and
21 still couldn't meet the sales.

22 MR. FLESH: What I come back to is your point of
23 which, even if you try to give some kind of
24 conditional -- or some time to reestablish flooring, are
25 we going to be back here again for other reasons?

1 MR. SANCHEZ: Yes.

2 MR. FLESH: Mr. Sanchez eloquently referred to the
3 record to show, you know, this is not just about
4 flooring, and then, Mr. Sieving, I think you were
5 focusing on flooring. What about everything else? The
6 other items? You are saying -- double negative. It was
7 not established that there was not permanent investment.
8 There are a lot of things that the findings show but
9 there still did suggest there were other issues as well.

10 MR. SIEVING: We prevailed on all of those issues.
11 Mr. Sanchez said that, for whatever reason, Kawasaki
12 made the decision not to present evidence on these other
13 issues that we're talking about, and why should they,
14 because they thought they had this thing won simply by
15 the flooring issue. Well, the reason that they should
16 have presented evidence is that this board is required,
17 mandated, to address those issues. Those issues were
18 addressed at the hearing, and Judge Prod found in our
19 favor on all of those issues with the exception of the
20 ones that I started my presentation by mentioning: Sale
21 performance and the flooring and breach of agreement for
22 not stocking enough units on the flooring. That is what
23 he based his Proposed Decision on. Flooring will cure
24 those issues. It will, by necessity. All three are
25 intertwined. If you don't have flooring, can't stock

1 units. If you can't stock units, you can't sell units.
2 Simple as that.

3 All we're asking for is a chance to do
4 that. It has not been a delay. It is just with this
5 protest pending, you are not going to be able to get
6 flooring; not going to happen.

7 MR. SANCHEZ: There was no evidence of that in the
8 record.

9 MR. FLESH: Now let me ask this question. Either
10 one of you or both of you. It wasn't in the record.
11 Should we remand this to take additional evidence on
12 these items?

13 MR. SANCHEZ: No.

14 MR. FLESH: You have to understand, we can do that
15 as well.

16 MR. SANCHEZ: I understand.

17 MR. FLESH: Mr. Sieving is trying -- he is not
18 trying -- he is suggesting that we remand -- give a
19 conditional sustain on the protest conditionally based
20 on the flooring issue. There are a lot of other issues
21 here. Mr. Obanda suggested that if we just fix this one
22 issue, are we back here again for the other reasons? A
23 lot of things going on here.

24 MR. SANCHEZ: You are back here again, and I will
25 tell you why. There is no dispute that up until 2011

1 this dealership had adequate flooring. From 2008 to
2 2011, its sales were horrible. He had adequate
3 flooring. He had adequate inventory. He had what he
4 says he needs. He had it for many years and still
5 couldn't do it, so you will be back here again. The
6 flooring is not going to cure -- contrary to what Mr.
7 Sieving says, and he is trying very hard to represent
8 his client, and I respect that -- it will not cure those
9 issues; not cure the customer satisfaction; not cure the
10 sales that he can't make.

11 MR. FLESH: We're focusing only on flooring.

12 MR. SANCHEZ: No, we're not. Sales is another
13 issue this is based on.

14 MR. FLESH: We have a dealer here in business
15 since 1978. Things start going bad in '05, '06,
16 whatever it was, and then has presented since then. But
17 he has been a dealer since 1978.

18 MR. SANCHEZ: I understand that, and,
19 respectfully, that is a long time and we understand that
20 and we have respected that, but simply by longevity does
21 not lower the requirements to be a dealer, and just
22 because I can say I've been a lawyer for 32 years, if I
23 can't practice law anymore and I am not doing a good job
24 for my clients, then maybe I shouldn't be a lawyer
25 anymore. Simply being longevity and having longevity in

1 a profession doesn't allow you to stay there. If I
2 start committing malpractice, then my clients aren't
3 going to have me anymore. I'm sorry --

4 MR. FLESH: You are going too far. We have the
5 evidence here, we have some items that have more
6 evidence than others. There is a lot of aspects to
7 this.

8 MR. SANCHEZ: I understand, but those items that
9 did not have evidence do not cure the egregious sales
10 deficiencies, flooring deficiencies, customer
11 satisfaction deficiencies that this dealer have. Having
12 a permanent facility doesn't cure those. Having --
13 doing warranty work does not cure those. They are
14 separate and apart from the issues that were sufficient
15 for Judge Prod to write this Proposed Decision. Even if
16 you obtained evidence on those, that is not going to
17 cure these overwhelming issues that were addressed and
18 that showed that for many, many years this dealer simply
19 hasn't been doing the job. Flooring or no; inventory or
20 no, hasn't been doing the job.

21 MR. FLESH: And the record is complete with
22 Kawasaki's notices to this dealer with respect to the
23 facilities not being adequate and suggesting they be
24 upgraded, modernized, picking up the sales numbers,
25 things other than just inventory? You are saying the

1 record is complete to all that?

2 MR. SANCHEZ: The record is complete to the extent
3 there was a record of it, yes. We did not focus on
4 those issues. There was testimony about the condition
5 of the facility, about the signage of the facility,
6 about how that was not the nicest Kawasaki facility.
7 Mr. Bellissimo presented evidence of other facilities
8 and how they compared to his facility. That is all
9 there already. There is not going to be anything new
10 about those things.

11 I will point out -- and this was very
12 carefully handled by Judge Prod in his Proposed
13 Decision -- Mr. Bellissimo testified today or stated
14 today that he wants to be a Kawasaki dealer for life.
15 Well, that was effectively rebutted by testimony that
16 Mr. Bellissimo, on the internet, actually discouraged
17 people from buying Kawasaki products and actually said
18 do not buy from Kawasaki. That is very strange behavior
19 for somebody who says he wants to be a Kawasaki dealer
20 for life. Dealers -- I've never seen it before in how
21 many years of doing this, decades, for a dealer to
22 actually say do not buy Kawasaki products, do not
23 support Kawasaki. That directly contradicted and
24 impeached his testimony at the hearing that he promoted
25 Kawasaki products. He actually did things to the

1 detriment of Kawasaki. So will we be back here again?
2 Yes. If we have to rely on that as a good-cause factor,
3 we will be back here again and there will be a lot more
4 evidence of that. It is limited here in the record only
5 on his -- to rebut his testimony that he promoted
6 Kawasaki. He clearly demoted, if you will, or argued
7 against people buying Kawasaki products on the internet
8 and that cannot be taken down. That is there forever.
9 So he actually tried to harm -- effectively harm
10 Kawasaki products, and that is there forever and will
11 not be erased.

12 MR. OBANDO: I want to go back to the economy of
13 probably the region, et cetera. That is the concern, in
14 general, of mine. How is the market doing in terms of
15 sales in that region? You know, we obviously plummeted.
16 We had decline.

17 MS. PARKER: Has to be in the record.

18 MR. SANCHEZ: There was something in the record.

19 MS. PARKER: Being an older time frame, not a
20 current time frame.

21 MR. SANCHEZ: How is it today?

22 MS. PARKER: Can't do today.

23 MR. SANCHEZ: I can tell you what was in the
24 record as to what we presented on that issue.

25 MR. OBANDO: Is that fine?

1 MS. PARKER: As long as it is in the record.

2 MR. SANCHEZ: On the record, it was shown that
3 this area where Burbank is, that district performed
4 above national average, performed above other averages
5 that Kawasaki monitored, so this area should actually be
6 doing better than the national average. Those
7 percentages that I showed you, the 41 percent and the 20
8 and 30, those are national averages that this dealer is
9 competing against, but there was testimony in the record
10 showing that the district, the state, the region, all do
11 better than national average, so this dealership should
12 be knocking it out of the park and beating these by over
13 100 percent. Instead, it is at less than 50 percent, 30
14 percent, 20 percent. So that was in the record. How
15 this area is doing compared to the nation is much better
16 than the nation, and this dealer should consequently be
17 doing much better than the nation.

18 MR. OBANDO: Do you want to comment on that or
19 respond?

20 MR. SIEVING: Briefly. As I said earlier in my
21 presentation, this is and always has been a small store.
22 It is not talking about Home Depos opening up and
23 selling versus a small hardware store. This is a small
24 hardware store. It is never going to sell as many units
25 as the big stores they put in Tucson or wherever they

1 put them in. It is small dealership. It's always been
2 that way and always will be that way. Again, we're just
3 asking for an opportunity for him to save his business
4 and get back to business.

5 MR. FLESH: One more question. Mostly Mr.
6 Sanchez. I want to make certain in the record, is there
7 anything other than that -- I thought you brought it up
8 twice, but once you brought up about this Mr. Sieving's
9 suggesting that we have a conditional sustaining in the
10 protest, that because of the things that was not brought
11 up at the hearing and it was -- and you stood corrected.
12 Anything else that you think we heard that was outside
13 of the record so we know right now, please, and same
14 question to you, Mr. Sieving.

15 MR. SANCHEZ: Yes, that was in his brief. The
16 other thing that was not in the record was that somehow
17 this protest was hanging over this dealer's head and he
18 couldn't even apply for flooring. That is just not
19 logical.

20 MR. FLESH: I'm asking, your position was that
21 that was not in the record?

22 MR. SANCHEZ: It was not brought up in the record
23 and that certainly could have been. He was asked did
24 you apply for flooring, and the answer was no, with
25 other institutions.

1 MR. FLESH: Thank you.

2 MR. SIEVING: Mr. Sanchez made reference to some
3 postings on the internet that Mr. Bellissimo did
4 discouraging people from buying Kawasaki. That was
5 excluded from the record. They attempted to offer that.
6 It was excluded. It was admitted for the limited
7 purpose of impeaching Mr. Bellissimo's credibility with
8 respect to advertising or certain actions he had taken
9 to promote the product. It was excluded for all other
10 reasons, including trying to impeach his statement that
11 he wants to remain a Kawasaki dealer.

12 MR. SANCHEZ: That was allowed for that purpose,
13 actually, is my recollection.

14 MR. SIEVING: Not to remain a Kawasaki dealer?

15 MR. SANCHEZ: Just that he had promoted Kawasaki
16 products in the past.

17 MR. OBANDO: Okay. Any other questions from the
18 board members? Okay. So we'll -- we have another case
19 to hear and we'll take that case up next and then we'll
20 go into a closed session.

21 So, the second case we're going to hear is
22 the case of D&A Automotive Group, O.C. Genuine Scooters
23 of Santa Ana versus Genuine Scooters, Protest Number
24 PR-2355-12 and D&A Automotive Group, O.C. Genuine
25 Scooters of Tustin versus Genuine Scooters, Protest

1 Number PR-2356-12.

2 By letter dated November 28th, 2013,
3 Genuine Scooter gave notice to Protestants and the Board
4 of its intent to establish a Genuine Scooter dealer.
5 Protestants are located within the relevant market area
6 of proposed new dealer. Genuine Scooter contends that
7 Protestants have abandoned these matters by its failure
8 to participate in the mandatory settlement conference
9 and discovery. Protestants contend that they have been
10 timely corresponding with Respondent's counsel and
11 filing necessary documents as required.

12 A telephonic hearing was held before
13 Administrative Law Judge Anthony M. Skrocki on June
14 28th, 2013.

15 The ALJ found that the elements of Vehicle
16 Code Section 3050.2(b) were satisfied in that: Number
17 1, there was a "failure to comply with authorized
18 discovery" by Protestants; (2), The failure was
19 material; and (3) Protestants had no "substantial
20 justification for that failure." ALJ Skrocki
21 recommended that the Executive Director obtain direction
22 of the Board to dismiss the protests in accordance with
23 Section 3050.2(b). The Executive Director concurred in
24 the ALJ's findings and requested the Board direct that
25 the protests be dismissed with prejudice. The Proposed

1 Order would dismiss protests and permit Genuine Scooter
2 to establish the proposed new dealership.

3 MS. PARKER: I made an error on the date. The
4 notice of termination was November 28, 2012, that was my
5 typo. In 2012, the notice was issued. It was intended
6 to establish.

7 MR. OBANDO: Is that corrected on the record?

8 Have all the parties come up?

9 For the record, if you could state your
10 name, please.

11 MR. TUCHMAN: I'm Terry Tuchman.

12 MR. HUGHES: Gavin Hughes from the Law Offices of
13 Michael J. Flanagan, representing Respondent Genuine
14 Scooters.

15 MR. OBANDO: Mr. Tuchman, you are representing
16 yourself?

17 MR. TUCHMAN: Uh-huh.

18 MR. OBANDO: Thank you.

19 Kind of like the previous hearing, we will
20 allow the Respondent 15 minutes, allow you 15 minutes,
21 and then we will have five and five for a response.

22 Go ahead, Respondent.

23 MR. HUGHES: Yes, thank you. Well, I think Judge
24 Skrocki's Proposed Decision was well-reasoned,
25 well-supported, covers the relevant facts and pretty

1 much speaks for itself. I assume you all had an
2 opportunity to review it. It is very thorough and tells
3 a story well and provides the support and justification
4 for why these protests should be dismissed.

5 In essence, the notice was issued in
6 November of 2012. The protest was filed in December of
7 2012 and we are no closer today to resolving this
8 protest than when it was noticed and filed back in 2012.
9 It is not fair to our client to effectively be held
10 hostage. This isn't a termination, this is an add
11 point. They have addressed a need to better serve their
12 customers and the public, and they are trying to do so
13 through the proposed establishment, and they are being
14 denied the opportunity to have a sufficient hearing by
15 the Board of whether or not that will, in fact, benefit
16 the public.

17 They are being held hostage. I don't know
18 how to say it any clearer. The dilatory conduct of
19 Protestant in not pursuing these protests has
20 essentially paralyzed the Board and paralyzed Respondent
21 and they cannot move forward. Protestant could have
22 retained counsel. He was encouraged to retain counsel.
23 He stated he would retain counsel and he chose not to.
24 It is not that he is incapable. He filed yet another
25 suit against Respondent in Superior Court and he has

1 counsel representing him in that case. He is more than
2 capable of bringing in counsel. It is apparent that he
3 cannot pursue these protests on his own, yet he is
4 unwilling to go out and secure counsel in doing so. We
5 should not suffer for that. The Board should not be
6 burdened with dealing with these issues which are all
7 but certain to reoccur. If the Board does not confirm
8 the recommendation to dismiss these protest, we will be
9 here again with the same exact issues. We have gotten
10 nowhere in discovery. Once we get into -- if we were to
11 be forced to go back and litigate these protests, I'm
12 all but certain discovery would go nowhere. We would
13 have issues regarding discovery. We would have issues
14 regarding securing documents, getting witnesses
15 available for deposition, and we would find ourselves
16 back here again. I don't think that is an effective use
17 of the Board's limited resources at this time, and it
18 certainly is not fair to Respondent. This dilatory
19 conduct should not result in a multi-year stay of the
20 proposed establishment.

21 I would urge the Board to adopt the
22 recommendation of Judge Skrocki in its entirety as
23 proposed, and I will reserve the remainder of my time.

24 MS. PARKER: Mr. Obando, one point of
25 clarification. We didn't announce to the audience that

1 the Board members have, in fact, reviewed the
2 Administrative Record as well as the Proposed Order.

3 MR. OBANDO: Just for the record, we, all Board
4 members, have reviewed the record and are ready to
5 deliberate.

6 MS. PARKER: Thank you.

7 MR. OBANDO: Okay. Mr. Tuchman, 15 minutes.

8 MR. TUCHMAN: I was going to start out by saying
9 good morning, but it is the afternoon.

10 I'm Terry Tuchman, and I have a little
11 company, D&A Automotive and also Genuine Scooters of
12 Santa Ana and Genuine Scooters of Tustin.

13 I brought the original action before the
14 board on December 14th against Genuine Scooters, LLC for
15 the violation of Vehicle Code 507 and 3062, which
16 preclude Genuine Scooters from establishing the same
17 line dealer in the relevant market area, and in
18 addition, for further violating the territorial contract
19 granting O.C. Genuine Scooters of Santa Ana a 25-mile
20 radius further violating the also called standard of
21 granting individual dealers a minimum of a 10-mile
22 radius. Genuine Scooters, LLC has been acting under the
23 25-mile radius, per our contract, for seven years. By
24 placing another dealer in the Costa Mesa area, Genuine
25 will be violating the 10-mile radius they claim they

1 grant each of their dealers. Costa Mesa is well within
2 the 10-mile limit of Tustin and Santa Ana. I am acting
3 in pro per in the matter before the Board. I am acting
4 to the best of my capabilities to follow the schedules
5 and documents that are requested.

6 To someone who doesn't do this on a regular
7 basis, on a daily basis, this can be very confusing. I
8 did what I could to meet the deadlines, except turn in
9 all documents that were requested. It has been claimed
10 that I have been causing delays in failure to file the
11 documents. This is incorrect. I have filed all
12 documents to the best of my capabilities. However,
13 based on a technicality, they are claiming that such
14 documents have not been received. First, I was unable
15 to open the attachments for proof of service. Once I
16 was able to open it, I didn't quite understand the
17 proof-of-service concept and the attachment that had to
18 be placed on each document that was sent to them via
19 fax. But that does not mean I did not send them. I did
20 send the required documents, Request for Production of
21 Documents, Objection to Respondent's Document Request,
22 its Statement of Dispute Discovery Request. Such
23 documents were, in fact, produced and sent to all
24 correct parties via email/fax.

25 I wish to address the allegations as far as

1 claiming my health had been a delay tactic. I didn't
2 realize I needed to disclose my personal health matters
3 to the people I had never met. I notified all of the
4 parties as soon as I was able and found what my
5 condition was. I, myself, had just been made aware of
6 the inability to travel.

7 MS. PARKER: It's in the record.

8 MR. FLESH: Inability to travel?

9 MR. OBANDO: It is in the record.

10 MR. TUCHMAN: Had I known the opposing party would
11 make a mockery of my illness, I would have asked my
12 physician to write a formal letter describing my
13 symptoms and condition. The physician did invite anyone
14 to contact him with any questions. Anyone could verify
15 the fact that I would facing and suffering from vertigo
16 and was advised not to travel.

17 My failure to appear for the telephonic
18 conference was a misunderstanding on my part. I
19 received an email from Dana Windward taking the
20 mandatory settlement conference off calendar. I
21 believed that all future dates had been removed or
22 revoked from the calendar at such time until the parties
23 could discuss new dates for such conference. I received
24 a call for the conference while I was in the physician's
25 office. I quickly dressed and left the appointment to

1 call -- to go home and join the conference. At that
2 time, I called and was told the conference was over and
3 I missed it. I hadn't received any reminders that such
4 telephonic conference was back on calendar, and from the
5 emails on April 8th, I mistakenly believed it had been
6 taken off calendar.

7 This motion to dismiss should not be
8 granted. The Board should look beyond the technicality
9 of failing to file documents with the proof of service,
10 especially when such documents were, in fact, received
11 by all parties. The merit of this case had been
12 examined and would lose my one opportunity to do so with
13 the governing body that is supposed to safeguard all on
14 these matters, if this matter is dismissed.

15 Furthermore, if the motion to dismiss
16 Genuine Scooters would be allowed, it would knowingly
17 violate their franchise territory agreement, violate the
18 Vehicle Code and statutory laws, placing or establishing
19 the same-line dealer in the relevant marketing area.
20 Should they be allowed to do this in California, what
21 would prevent them from not honoring any of their
22 territorial agreements with other dealers across the
23 United States? They would have absolute power to decide
24 which dealers would be successful and which dealers
25 would fail. There is no reason -- there is a reason the

1 Vehicle Code is in place, to prevent statutory law and
2 to prevent this contract and other contracts from being
3 violated.

4 I'm asking the Board to consider all the
5 repercussions that would come from allowing the motion
6 to dismiss on the merit of technicality and not being
7 fully examined upon its merit. I would hope that if
8 this Board decides to dismiss the case, I would hope
9 they would do so without prejudice so that I can
10 re-file, rescind and follow up with the necessary
11 procedures that the Board is requesting.

12 MR. HUGHES: It is tempting to feel -- okay.

13 MR. OBANDO: Absolutely, you have five minutes.

14 MR. HUGHES: It is tempting to feel some sympathy
15 for Mr. Tuchman. He is acting in pro per. He is an
16 older gentleman. But don't be fooled. This is a
17 sophisticated businessman. He has been around the block
18 a few times. This is not some older gentleman that
19 deserves our sympathy and pity. That is not the case.
20 He knows what he has been doing throughout, and this
21 decision is not based on some mere technicality or
22 failure to provide or attach a proof of service. If you
23 read the decision, which I'm sure you had, you'll see
24 that is not what Judge Skrocki based his decision on.
25 That is not the case.

1 As far as his breach of contract claim for
2 the 25 miles, he has an action in Superior Court right
3 now. He can pursue it through that action, file another
4 action. He is represented by counsel there. He can --
5 I'm assuming counsel adequately represents his concerns
6 regarding this purported guaranteed territorial promise
7 in the agreement, but it doesn't belong before the
8 Board. The Board can't address that anyway. So much
9 time has passed. The Board has not been able to
10 effectuate its statutory purpose, and certainly it has
11 had no opportunity to do so, and it is time to dismiss
12 this protest. It cannot languish this any longer, and I
13 don't have anything else to say at this point unless if
14 there are any questions.

15 MR. OBANDO: Okay.

16 MR. FLESH: There is one purpose among others that
17 we have and that is that we're a step in the process,
18 administrative process. You have to exhaust all of your
19 administrative hearings, and this is one step in the
20 process, so I suppose this is what we are doing.

21 MR. HUGHES: I was looking at it in terms of the
22 breach of contract. I don't think the Board would have
23 jurisdiction and that should go straight to the Superior
24 Court, and he is already in Superior Court and has
25 counsel there.

1 MR. FLESH: That's correct.

2 MR. OBANDO: You have five minutes.

3 MR. TUCHMAN: Lost my train of thought for a
4 second.

5 MR. OBANDO: No problem.

6 MR. TUCHMAN: I have to stay within the framework.

7 MR. OBANDO: With the record.

8 MR. TUCHMAN: I think when we look at the
9 violations of 507 and 3062 of the Vehicle Code, I think
10 it is pretty clear that the Board's responsibility to
11 the citizens out here, or out there, is to help and
12 maintain a certain kind of order so the dealers, whether
13 it be a new dealer or existing dealer, can still sell
14 scooters. In my case, it is scooters. I only sell one
15 brand -- it is the Genuine brand -- and I still think it
16 is still the best bang for the buck out there of all the
17 product out there, and I feel having this dealer go into
18 Costa Mesa, it will definitely hurt my sales. I do
19 everything in my power to make sure my customers are
20 adequately serviced with their scooter needs.

21 MR. HUGHES: I am going to object for the record.
22 We are getting a little beyond the record, but if the
23 Board is interested in hearing it --

24 MR. OBANDO: Well, I'll sustain if it needs to be
25 in the record.

1 MR. TUCHMAN: And I also feel that the Genuine
2 Scooters needs to respect the territorial area they give
3 us to produce and to sell their product.

4 MR. HUGHES: May I respond briefly? He had an
5 opportunity to pursue these interests and he didn't. He
6 just did not pursue it. And as far as having the right
7 to sell scooters, he is not losing that right. This
8 isn't a termination case. This is adding a dealer. He
9 gets to continue on as a dealer.

10 I have nothing further.

11 MR. OBANDO: I guess one question is, I mean,
12 would you agree that there should be -- I mean, there
13 are certain processes in which we have to adhere to in
14 order to achieve and add in terms of whether you are
15 protesting. Would you agree there has to be an A, B and
16 an X, Y, Z to get an end to this? And I think part of
17 the record is showing that we didn't get there. I mean,
18 whether the argument is whether, you know, it is 25
19 miles or 10, you know, this Board has jurisdiction over
20 that, and if those items would have been checked off,
21 you know, we probably would be having a different
22 conversation. So would you agree that there needs to be
23 a process that needs should be followed, number 1, and
24 number 2, I guess to respond to your argument regarding,
25 you know, whether a dealer is going to be affected by

1 that? I mean, would you like to respond to his comments
2 about the Superior Court already kind of handling that
3 situation as part of that, as well and you having
4 counsel to that?

5 MR. TUCHMAN: Well, the Superior Court case is a
6 violation of -- I think it is called a Shining Light Law
7 where the manufacture gave away my dealer list which is
8 mentioned in the judge's --

9 MS. PARKER: I don't know how much of this was
10 covered because it was very minimal, other than the
11 opportunity to get counsel. So I don't know if we know
12 other than there might have been something in the facts
13 or cover sheet from the case, but I don't recall much
14 information in there.

15 MR. TUCHMAN: Was there a case that we're --

16 MR. OBANDO: No.

17 MS. PARKER: I don't think that your reply to the
18 opposition -- or excuse me, your opposition contained
19 information on the Superior Court case, so we need to
20 keep that -- it doesn't have any merit to this matter
21 anyway. It is irrelevant to this matter.

22 MR. TUCHMAN: That's all I have then. Don't need
23 to belabor this.

24 MR. OBANDO: We'll go into Closing Executive
25 Session to review the two matters.

1 MR. TUCHMAN: Will the Board notify us in writing?

2 MR. OBANDO: We'll reconvene.

3 MS. PARKER: You can wait outside, and we go into
4 a closed session.

5 MR. FLESH: If you need to move on, we can notify
6 you.

7 MS. PARKER: As soon as we're done with closed
8 session, we have to reconvene.

9

10 (Brief recess.)

11

12 MR. OBANDO: Opening up for open session at 12:48.
13 Okay.

14 Public members have deliberated on the two
15 cases, and Robin is going to provide you with our
16 decisions.

17 Robin, take the first item, D&A Automotive
18 Group, Genuine Scooters of Santa Ana.

19 MS. PARKER: That is Agenda Item 5(b).

20 MR. OBANDO: That's right.

21 MS. PARKER: The Board members unanimously adopted
22 the Administrative Law Judge's findings, and the
23 Executive Director is directed to dismiss with prejudice
24 D&A Automotive, O.C. Genuine Scooters of Santa Ana
25 versus Genuine Scooters, Protest Number PR-2355-12 and

1 D&A Automotive Group, O.C. Genuine Scooters of Tustin,
2 versus Genuine Scooters, Protest Number PR-2356-12.

3 This decision will go out to the parties tomorrow.

4 MR. OBANDO: Okay. And then let's do Item 5(a).
5 Burbank Kawasaki, Inc. Versus Kawasaki Motors Corp,
6 U.S.A., Protest Nos. PR-2328-12 and PR-2333-12.

7 MS. PARKER: This is conceptionally the Board's
8 order. A written order will be forthcoming the week of
9 August 7th.

10 The Board is remanding the matter to the
11 Administrative Law Judge. The Board historically seeks
12 to avoid a forfeiture and is sympathetic to the dealer's
13 position regarding the flooring; however, it is mindful
14 of Kawasaki's interest in their distribution of their
15 products. Within 30 days after the date of the Board's
16 Order of Remand, the parties are going to be ordered to
17 participate in a mandatory settlement conference to
18 resolve the flooring issues. If the matter does not
19 settle, then the matter will be remanded to
20 Administrative Law Judge, Judge Prod, to take additional
21 evidence and/or conduct an additional hearing in the ALJ
22 discretion regarding a reasonable amount of flooring and
23 a reasonable time frame to secure the flooring and
24 address other conditions such as stocking a complete
25 line of Kawasaki products, and Burbank Kawasaki

1 Incorporated's selling penetration into the SEA.

2 Time is of the essence in this matter and
3 the Board anticipates that it will be heard and resolved
4 by the Board's November 12th, 2013 meeting, which is
5 scheduled to be held in Sacramento.

6 Furthermore, nothing outside of the
7 Administrative Record was considered by the Board in
8 making this determination.

9 MR. OBANDO: Okay. That captures it, right?

10 MS. PARKER: Mr. Flesh?

11 MR. FLESH: Yes.

12 MR. OBANDO: That captures our decision. Great.
13 Thank you, Ms. Parker.

14 With that, there are no other matters on
15 this agenda, so we are adjourned at 12:51 P.M.

16 Thank you.

17 MR. SANCHEZ: Can you please email me with a price
18 of a copy of the transcript in the Burbank part and how
19 quickly we could get it. Thank you.

20
21 (PROCEEDINGS CONCLUDED.)
22
23
24
25

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA NEW)
MOTOR VEHICLE BOARD)
GENERAL MEETING)
_____)

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, LINDA S. OAK, official Certified Shorthand
Reporter of the State of California, for the County of
Los Angeles, do hereby certify that the foregoing pages,
1 through 66, comprise a full, true and correct
transcript of the proceedings held in the above-entitled
matter on Thursday, July 25, 2013.

Dated this 5th day of August, 2013.



LINDA S. OAK, CSR NO. 10316
Official Court Reporter

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[illegible]

PROOF OF SERVICE

I, Lorraine Moore, declare:

I am employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 600 Anton Boulevard, Suite 900, Costa Mesa, California 92626-7221. On October 15, 2013, I served a copy of the within document(s):

**EXHIBIT "A" TO RESPONDENT KAWASAKI MOTORS
CORP., U.S.A.'S POST-HEARING BRIEF ON REMAND**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. and the transmission was reported as complete and without error.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Costa Mesa, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- ☐ following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ by transmitting via electronic mail the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m. and the transmission was reported as complete and without error.

Michael M. Sieving, Esq.
CALLAHAN THOMPSON SHERMAN &
CAUDILL, LLP
1545 River Park Drive, Suite 405
Sacramento, CA 95815
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Attorney for Protestant
BURBANK KAWASAKI INC.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 15, 2013, at Costa Mesa, California.



Lorraine Moore